IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1756 of 2004

with
SPECIAL CIVIL APPLICATION NO 1621 of 2005
SPECIAL CIVIL APPLICATION NO 1622 OF 2005
SPECIAL CIVIL APPLICATION NO 1623 OF 2005
SPECIAL CIVIL APPLICATION NO 1624 OF 2005
And
CIVIL APPLICATION No 5961 of 2004

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TATA ENGINEERING & LOCOMOTIVE CO.

Versus

GOPIBEN NAMDEO DHARAV

Appearance:

1. First Appeal No. 1756 of 2004
MR RR MARSHALL for Appellant No.
MR AMIT N PATEL for Respondent No. 1-4

MR HASMUKH THAKKER for Respondent No. 5

2. Special Civil Application No. 1621 to 1624 of 2005
MR RR MARSHALL for petitioners.
MR AMIT N PATEL for Respondent No. 1
MR HASMUKH THAKKAR for Respondent No.2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date of decision: 04/02/2005

COMMON ORAL JUDGEMENT
(Per : HON'BLE MISS JUSTICE R.M.DOSHIT)

Heard the learned advocates.

1. The appellant before this Court is the manufacturer of the vehicle in question. The appellant challenges the common judgment & award dated 10th December, 2003 passed by the Learned Motor Accident Claims Tribunal, Valsad in Motor Accident Claim Petitions Nos. 992 of 2002 to 996 of 2002, in so far as the appellant has been held to be liable to pay the amount of compensation awarded to the respective claimants.

2. Mr. Marshall has submitted that as the local dealer at Nagpur was not impleaded nor was he served with the summons of the Court, there was failure on the part of the appellant in entering its appearance before the Tribunal. He has submitted that in fact the vehicle in question was insured with the respondent Insurance Company. As the insurance policy could not be produced before the Tribunal, the appellant has been held liable to pay the amount of compensation awarded to the claimants. He has submitted that the challenge to the impugned award is confined to the liability of the appellant, i.e. whether the vehicle in question was insured and was the Insurance Company liable to pay the amount of compensation awarded to the claimants.

3. On the facts and in the circumstances of the case the impugned judgment & award dated 10th December, 2003 is set aside in so far as the appellant has been held liable to pay the amount of compensation money to the

concerned claimants. The claim petitions are remanded to the Learned Tribunal for decision afresh on the question of liability to pay the compensation money amongst the appellant and the respondent Insurance Company. The appellant shall be at liberty to file written statement and lead evidence in support of its claim. The Insurance Company shall also have liberty to lead evidence in rebuttal.

4. Pending the decision afresh as directed hereinabove, the claimants in Claim Petition Nos. 993 of 2002 to 996 of 2002 shall be entitled to withdraw the amount of compensation money deposited by the appellant in the Tribunal. As to the claimants in Claim Petition No. 992 of 2002; the learned Tribunal shall make order for disbursement of the amount of compensation amongst the claimants as observed in paragraph 20 (a) to 20 (d) of the impugned judgment.

5. In the event the insurance company is held liable to pay the compensation money, subject to the order in appeal, if any, the insurance company shall remit the amount of compensation to the appellant as may be directed by the Tribunal.

6. The Appeal and the Special Civil Applications are allowed in the above terms. The parties shall bear their own cost.

7. Civil Application stands disposed off.

Dt: 4-2-2005 [MS. R.M. DOSHIT, J]

[S.R. BRAHMBHATT, J]

/vgn